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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1994

Addendum

FINLAND*

[11 September 1995]

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* The initial report submitted by the Government of Finland is contained in document CAT/C/9/Add.4; for its consideration by the Committee, see documents CAT/C/SR.65 and 66 and the Official Records of the General Assembly, Forty-sixth session, Supplement No. 44 (A/46/44), paras. 182-208.

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Introduction

1. On 28 September 1990, the Government of Finland submitted the first report called for under the Convention against Torture to the Committee against Torture. The Committee considered the report at its 65th and 66th meetings, on 16 November 1990. Since that first report, the most important amendments and reforms of Finnish legislation in the fields covered by the Convention have related, inter alia, to the concept of "assault" in the Penal Code (chap. 21, sect. 5), which was changed to include more clearly the concept of "torture" contained in the Convention, the scope of application of the Penal Code of Finland, international assistance in judicial matters, bans on extradition and evidence rules.

2. Other important reforms have also been carried out or prepared. These involve, e.g. penitentiaries, enforcement of sentences, the police, military law, non-military national service, health care, social work, ethnic minorities as well as foreigners and their status in Finland.

3. Further, this supplementary report contains an account of the complaints of torture or other cruel, inhuman or degrading treatment or punishment addressed to the Parliamentary Ombudsman, as well as a note of two decisions of the European Commission of Human Rights of the Council of Europe on complaints of the State of Finland being in breach of the European Convention on Human Rights. The powers and duties of the Parliamentary Ombudsman and the Chancellor of Justice of the Council of State as well as the allocation of duties between them are also presented in this report.

4. The supplementary report of the Government of Finland on the Convention against Torture was to be submitted to the United Nations Centre for Human Rights no later than 28 September 1994. The present supplementary report has been drawn up in accordance with the instructions issued by the Committee against Torture (CAT/C/14).

5. The requests for supplementary information made by the members of the Committee during its consideration of the first Finnish report seemed, in most cases, to derive from uncertainty, on the level of principle, as to which provisions of the Convention are directly applicable in Finland and which require amendment of the material provisions in national legislation. The general practice of implementation of the international treaties concluded by Finland is to enact a "framework Act" and a "framework Decree" providing that the legislative provisions in the treaty in question are in force in Finland as agreed without any further enumeration. Accordingly, by the enactment of the framework Act and Decree the treaty is implemented as a whole; it is then published in the *Treaty Series of the Statutes of Finland* and becomes binding legislation in Finland. The Convention against Torture has been implemented in Finland using this framework procedure. In addition, other current legislation has been amended, where necessary, to comply with the obligations imposed by the new treaty, should a discrepancy have existed in the first place.

6. The other alternative for the implementation of an international treaty in Finland is to enact a material Act or Decree. This procedure involves the drafting of completely new Finnish legislation incorporating

the entirety of the obligations imposed by the treaty. This more complicated procedure has not been used in Finland when human rights conventions have been implemented.

7. Finland became a signatory to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on 16 November 1989. The European Convention entered into force in Finland on 1 April 1991. In addition, Finland became a signatory to the first and second additional Protocols to the European Convention on 4 November 1993. The Protocols have not yet taken effect, as all of the States parties to the main Convention must first adopt them. Several States parties have not yet done so.

8. The purpose of the first additional Protocol is to promote the participation of States not members of the Council of Europe in the activities of the organization. Under the Protocol a non-member State may accede to the European Convention. The Protocol also contains some technical amendments to the text of the European Convention made necessary by this change.

9. The purpose of the second additional Protocol is to provide for more flexibility in the election of the members of the Committee set up by the European Convention. Under the Protocol the members could be re-elected twice, whereas the current provision allows for one re-election only.

10. The Council of Europe Committee for the Prevention of Torture (CPT) paid an inspection visit to Finland from 10 to 20 May 1992. It inspected the treatment of persons deprived of their liberty in institutions. The visit is presented also in this supplementary report of the Government of Finland on the Convention against Torture, especially in so far as the visit and the inspections carried out concern issues falling within the scope of this report. The report of the CPT on its visit to Finland and the comments of the Government of Finland on the recommendations, observations and requests for additional information are annexed to this supplementary report.

I. INFORMATION ON NEW MEASURES AND NEW DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION FOLLOWING THE ORDER OF ARTICLES 1 TO 16

A. Punishability of torture in Finland (art. 4)

11. In the Government Bill on the amendment of the basic right provisions in the Constitution (Bill 1993/309) it is proposed that the prohibition of torture and other degrading treatment be incorporated into the Constitution (sect. 6, para. 2). This provision would generally apply to official activities. The new Parliament, elected in 1995, is expected to adopt the amendment. The new provision would read as follows:

> "No one shall be sentenced to capital punishment, tortured or otherwise treated in a degrading manner."

In addition, in section 7, paragraph 4, of the Constitution it is provided that a foreigner shall not be deported, extradited or returned to a country where he is under threat of capital punishment, torture or degrading treatment.

12. Finland abolished peace-time capital punishment in 1949. It was completely removed from the Finnish penal system in 1972 (Act 1972/343). The deportation or extradition of a person is also prohibited if there is a possibility that he will be under threat of unlawful capital punishment.

13. An explicit prohibition of torture in the Constitution emphasizes the fact that treatment inflicting severe mental or physical suffering, must not be approved under any circumstances. The prohibition of degrading treatment covers both physical and mental aspects. It is intended to apply to all forms of cruel, inhuman and degrading punishment or other treatment.

14. Torture, as defined in the Convention, is in most cases punishable as assault under chapter 21 of the Finnish Penal Code. In February 1995, Parliament adopted phase II of the Penal Code reform, which includes new provisions on assault, aggravated assault and petty assault. Chapter 21, section 5, of the Penal Code, in its amended form, reads as follows:

"*Assault*

"Who employs physical violence on another or, without such violence, damages the health of another, causes pain to another or renders another unconscious or to a comparable condition, shall be sentenced for *assault* to a fine or to imprisonment for at most two years.

"An attempt shall be punished."

15. The provision on assault covers two aspects. On one hand, employing physical violence on another constitutes an assault. It may result in injury or damaged health, but it is equally possible that the act has no visible effect. On the other hand, the emphasis may be in the effect of the act. It is punishable to damage the health of another or cause pain to another employing means other than physical violence. Damage to health, punishable as assault, covers bodily injury and illness, but also mental illness and mental disorders. Also, pain caused without physical violence is punishable as assault. Generally, pain is caused by damage to health, but in some cases it may be the only effect of the act.

16. An assault is aggravated if, for example, it is perpetrated in a manner manifesting exceptional brutality or cruelty and if it is to be considered aggravated also when assessed as a whole. The maximum penalty for aggravated assault is imprisonment for 10 years (sect. 6). Attempted assault and attempted aggravated assault are punishable. The provision on aggravated assault reads as follows:

"*Aggravated assault*

"If in the assault

"(1) grievous bodily harm or serious illness is caused to another or another is placed in mortal danger,

"(2) the offence is committed in an extremely brutal or cruel manner, or

"(3) a firearm, edged weapon or other comparable dangerous weapon is used

and the offence, also when assessed as a whole, is aggravated, the offender shall be sentenced for *aggravated assault* to imprisonment for at least six months and at most ten years.

"An attempt shall be punished."

17. Section 7 of the chapter provides for the penalty of a fine in minor cases of assault:

"*Petty assault*

"If the assault, when assessed as a whole and with due consideration to the minor character of the violence, the violation of physical integrity, the damage to health or other relevant circumstances, is of minor character, the offender shall be sentenced for *petty assault* to a fine."

18. Coincidentally, the slightly outdated provision in chapter 25, section 11 of the Penal Code on the extraction of confessions by torture was repealed.

19. In compliance with the rule in article 4 of the Convention, the reformed penal provisions on assault fully cover torture as defined in article 1.

B. Scope of application of the Penal Code of Finland (art. 5)

20. An offence committed in Finland is always judged in accordance with Finnish law. A Finnish citizen and a foreigner habitually resident in Finland are judged under Finnish law also for offences committed abroad. In general, other foreigners may be judged under Finnish law for offences committed abroad only if the offence is connected to Finland in the manner referred to in chapter 1, section 3, paragraph 2 of the Penal Code or if the offence is punishable also under the law of the place of commission (dual punishability). An exception is made with regard to "international offences". Such offences, enumerated in chapter 1, section 3, paragraph 2 of the Penal Code, are subject to the *principle of universality*, under which a foreigner may be judged under Finnish law also when the offence is not punishable under the law of the place of commission. Such offences include, in accordance with subparagraph 2a of the said provision, assault, aggravated assault, attempt thereof or another offence that is to be deemed torture under the Convention.

21. Prosecution for an offence committed outside Finland requires an order for prosecution by the Chancellor of Justice. It is for him to determine whether the act in question is to be deemed torture under the Convention, and as such subject to judgement in Finland under the principle of universality. The role of the Chancellor of Justice in the prosecution contributes to the fact that the absence of a specific torture provision is not in practice a hindrance for the application of the principle.

22. The Penal Code Reform Project completed its proposal for the scope of application of the Finnish Penal Code in 1991 (No. 2/1991 of the publication series of the Law Drafting Department, Ministry of Justice). According to the proposal, Finnish law would always apply to an offence committed outside Finland, where it is punishable under an international treaty in force in Finland regardless of the law of the place of commission (international offence). The provision would be supplemented by a Decree enumerating, exhaustively, those international offences subject to the principle of universality. Torture, as referred to in the Convention, is listed in the draft Decree. The Bill containing these proposals will probably be submitted to Parliament in the summer or autumn of 1995.

23. The proposal of the Penal Code Reform Project does not alter the list of offences subject to the principle of universality. It is merely proposed that they be listed in a Decree instead of an Act, so as to technically facilitate later alterations called for by developments of international law. Prosecution for an international offence (e.g. torture) committed abroad would continue to require the order for prosecution by the Chancellor of Justice. It is intended that a Bill to this effect will be submitted to the new Parliament elected in 1995.

C. International legal assistance (art. 9) and extradition ban (art. 3)

24. The Finnish Act on International Legal Assistance in Criminal Matters (1994/4) entered into force in January 1994. Under the Act the Finnish authorities provide legal assistance at the request of foreign authorities regardless of whether the two countries have concluded a treaty to this effect. Reciprocity is also not a condition for legal assistance. Legal assistance may be granted even if the act in question were not punishable under Finnish law (note, however, sect. 4, para. 4, of the Constitution, as referred to above).

25. An exception is made with regard to the use of coercive measures; a request for legal assistance for this purpose may be granted only if, and to the extent that, such measures would be available were the act committed in Finland under similar circumstances. As torture is under Finnish law punishable as assault, a suspect for which may be subjected to coercive measures under the Coercive Measures Act (1987/450), this restriction has no relevance with regard to the efficiency of article 9.

26. Legal assistance, as defined in the Act, does not include extradition, which is subject to separate legislation, i.e. the Extradition Act (1970/456). According to section 7 of the Act extradition shall not be granted, where there is reason to believe that the person whose extradition is requested will be in danger of losing his life or liberty or of other persecution because of, for example, the political situation. The danger of torture is not expressly mentioned in the provision. However, the Implementation Act of the Convention (1989/828) has made the legal provisions of the Convention directly applicable to the Finnish authorities. According to section 14 of the Extradition Act the Ministry of Justice decides on extradition. There is always an element of discretion involved. The ban, in article 3 of the Convention, on extradition to a State where there are substantial grounds for believing that the person

extradited would be in danger of being subjected to torture is directly binding on the Ministry of Justice when a request for extradition is being considered.

27. The Finnish Act on the Jurisdiction of the International Tribunal for the Prosecution of Persons Responsible for Crimes Committed in the Territory of the Former Yugoslavia and on Legal Assistance to the International Tribunal (1994/12) entered into force on 15 January 1994. It contains provisions on the fulfilment of the duties based on the Statute of the International Tribunal established by resolution 827 (1993) of the United Nations Security Council. These provisions involve the recognition and enforcement of the Tribunal's judgements in Finland, extradition and other international legal assistance and cooperation between the Tribunal and the competent Finnish authorities. The Act was enacted in accordance with the procedure reserved for constitutional amendments, because it, for example, obligates Finland to grant an extradition request by the Tribunal also when it concerns a Finnish citizen.

D. Free weighing of evidence (art. 15)

28. Under the Finnish Preliminary Investigations Act, a confession or a statement must not be obtained from a person being questioned through exhaustion, threats, coercion or other improper methods or approaches that influence the freedom of choice, willpower, memory or judgement of that person.

29. Under chapter 17, section 2, of the Code of Judicial Procedure, the concept of "free weighing of evidence" has been adopted into court proceedings in Finland. There is no provision regarding the status of evidence obtained through illegal means. The court shall carefully and objectively consider the available evidence and, using common sense, deem whether it constitutes sufficient proof in the matter at hand. Under Finnish law, evidence or statements obtained through pressure, torture or other punishable methods are not used as a basis for judicial decisions. It has not been considered necessary to take into Finnish law a provision expressly disallowing the use of statements obtained through torture in court proceedings.

E. Treatment of prisoners and right of correspondence (art. 16)

30. The basic provisions relating to the treatment of prisoners have been moved, by a legislative amendment (1995/128), from the Prison Administration Act to chapter 1 of the Decree on the Enforcement of Sentences. At the same time the provisions on correspondence between a prisoner and a body monitoring human rights were clarified. Chapter 2, section 9, paragraph 2, of the Decree on the Enforcement of Sentences (1974/612) contained a provision to the effect that a letter from a prisoner to a body supervising the operations of the penitentiary was to be delivered at once and uncensored. The clarification, stating that letters to the Human Rights Committee and the Commission of Human Rights are also to be delivered uncensored, has so far been based on a guideline issued by the Prison Administration Department of the Ministry of Justice.

31. The clarification has been extended to the statutory provision relating to the prisoner's correspondence, as well as to letters to and from any body monitoring human rights. According to chapter 2, section 9, paragraph 2, of the Act (1995/128) the correspondence between a prisoner and a body supervising the operations of the penitentiary, as well as a body monitoring human rights, to which the prisoner can by virtue of a treaty address appeals or complaints, shall be delivered at once and uncensored. The same amendment was made also to the Remand Imprisonment Act (1974/615); the correspondence between a remand prisoner and a body monitoring human rights must not be censored (sect. 13, para. 2, Act 1995/129). These amendments entered into force on 1 May 1995.

32. Also on 1 May 1995 the provisions relating to the use of telephones, the searching of prisoners and visitors and prison discipline were amended. A prisoner's duty to work was extended into a duty to participate.

F. Other reforms and proposed reforms; inspections by international bodies and human rights appeals

1. Proposed reform of the preventive detention system

33. In March 1994 the Penal Code Reform Project submitted its proposal on imprisonment and parole to the Ministry of Justice (No. 3/1994 of the publication series of the Law Drafting Department, Ministry of Justice). It was proposed that the incarceration of dangerous recidivists in preventive detention be abolished (Act on the same, 1953/317). According to the proposal, incarceration of an offender who is deemed dangerous could be replaced by a postponement of parole so that he would serve in prison the full term of the sentence passed by the court. The preparation of this proposal continues in the Ministry of Justice in 1995.

2. Report of the CPT on the inspection visit to Finland

34. Since the first report called for under the Convention against Torture the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment entered into force in Finland (on 1 April 1991, Treaty 1991/17, Act 1991/463). The CPT was established to examine, by means of visits, the treatment of persons deprived of their liberty. The Committee visited Finland from 10 to 20 May 1992. At that time it inspected, inter alia, three prisons and a prison asylum. The CPT report of 26 February 1993 and the Finnish comments thereto are annexed to this supplementary report.

35. In the report, which was adopted during the plenary session of the Committee held from 15 to 18 May 1993, it is stated that the Committee did not hear allegations of torture or other poor treatment (point 59). Regardless of this, the Committee presents Finland with a number of recommendations and requests for supplementary information. In the report, the Committee stressed violence among prisoners (65), amelioration of conditions in confinement (67-78), substantive defects in some prisons (80-83), certain issues relating to health care (105, 110, 118), staff training, appeals and supervision procedures (123, 129, 132), treatment of foreign prisoners (142), placement of prisoners (139) and the carrying of firearms in close proximity to prisoners (145).

II. ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE

36. The following contains more specific additional information requested by the Committee relating to, for example, issues of prison administration, which were, as stated, considered in the oral hearing, in the CPT report and in the Finnish comments thereto.

A. Chancellor of Justice of the Council of State and Parliamentary Ombudsman

37. The Finnish Constitution contains provisions on the Chancellor of Justice of the Council of State and the Parliamentary Ombudsman as well as on their duties (sects. 46 and 49). A specific Act has been enacted on the allocation of duties between them (1990/1224). For instance, both the Chancellor of Justice and the Ombudsman hear the complaints of individuals against the activities of the authorities.

1. Chancellor of Justice of the Council of State

38. The Council of State is attended by the Chancellor of Justice, who must be eminently competent in matters of law. There is also an Assistant Chancellor of Justice, who attends to the duties of the former, where necessary. Further, the Assistant Chancellor of Justice has a deputy, who takes his place when he is prevented from attending to his duties. The President of the Republic appoints the deputy for a term not to exceed five years.

39. The Chancellor of Justice supervises public authorities and officials in their observance of the law and the fulfilment of their duties so that no one's legal rights are violated. This supervision is based, for example, on the complaints of individual persons.

40. It is for the Chancellor of Justice to represent the public prosecutors before the Supreme Court and the Supreme Administrative Court and otherwise oversee the interests of the State, as well as prosecute charges or have them prosecuted before other courts, where he deems this necessary. As the supreme public prosecutor the Chancellor of Justice also supervises the public prosecutors, who are bound to comply with his orders.

41. The Chancellor of Justice has the right to attend the sessions of the Council of State, as well as all courts and government agencies, and to obtain information from the minutes and records of the Council of State, the ministries, the courts and the other authorities.

2. Parliamentary Ombudsman

42. During a regular parliamentary session, following the procedure provided for the election of the Speaker of Parliament, a person distinguished for his knowledge of the law shall be elected to serve as the Parliamentary Ombudsman for a term of four years. Pursuant to instructions given to him by Parliament, the Parliamentary Ombudsman oversees that courts and other authorities, as well as public officials performing their duties, public

employees and other persons performing public duties, comply with the law and fulfil their obligations. This supervisory task is also based, for example, on complaints.

43. The Ombudsman has the same right as the Chancellor of Justice to attend the sessions of the Council of State, the courts and government agencies, to obtain information from the minutes and the records of the Council of State, the ministries, the courts and the other authorities, and to prosecute charges or have them prosecuted for any error or negligence which he finds in the activities under his supervision. If the Council of State or a member thereof, in an official act, proceeds in an unlawful manner, the Ombudsman has the power to object to this and, at the same time, point out the unlawfulness. If the objection is not heeded or if the nature of the matter so demands, the Ombudsman has the power to report the matter to Parliament.

44. Each year the Ombudsman submits a report to Parliament on the course of his official duties and on the standard of judicial practice and any defects he may have noticed in legislation. If the Ombudsman, in an official act, has proceeded in an unlawful manner, Parliament may order charges to be brought against him.

3. Allocation of duties between the Chancellor of Justice and the Ombudsman

45. The main principles of the Act on the Allocation of Duties between the Chancellor of Justice of the Council of State and the Parliamentary Ombudsman are as follows.

46. The Chancellor of Justice of the Council of State is released from the duty to monitor compliance with the law in matters within the ambit of the Parliamentary Ombudsman, involving:

(a) The Ministry of Defence, with the exception of matters referred to in section 41, paragraph 1, of the Constitution; the armed forces; the border guard service; the peace-keeping personnel referred to in the Act on the Participation of Finland in the Peace-keeping Operations of the United Nations (1984/514); military law;

(b) Apprehension, arrest, detention and travel bans, referred to in the Coercive Measures Act (1987/450), administrative custody and other deprivation of liberty;

(c) Prisons and other institutions where persons are kept involuntarily.

Further, the Chancellor of Justice is released from consideration of matters initiated by persons who have been deprived of their liberty by detention, arrest or other measures.

47. In all cases referred to above, the Chancellor of Justice must transfer the matter to the Ombudsman, unless he for special reasons deems it appropriate to decide the matter himself.

48. The Chancellor of Justice and the Ombudsman may by mutual agreement also transfer to the other matters falling within both their ambits, where such transfer can be assumed to expedite the consideration of the matter or where it is justified for another special reason. In a matter initiated by complaint, the transfer is to be notified to the complaining party.

4. Proposed reforms

49. It is the intention to expand the ambits of both the Chancellor of Justice and the Ombudsman to cover human rights and basic rights. The pertinent legislation is currently in Parliament and will be decided during 1995. A statute of limitations - of five years - has been introduced for complaints to the Ombudsman. This provision will enter into force in the beginning of 1996. A corresponding statute of limitations is being planned for complaints to the Chancellor of Justice.

50. A Committee reflecting on the reform and reorganisation of the public prosecution service submitted its report to the Ministry of Justice on 4 April 1995.

51. The reform of judicial procedure in criminal matters and the prevention of white-collar crime require the improvement of the public prosecutors' operations. The Ministry of Justice Committee has proposed that the duties of the supreme public prosecutor be transferred from the Chancellor of Justice to a new authority, the Prosecutor-General. Currently, the Chancellor of Justice is both the supreme public prosecutor and the supreme supervisor of legality. According to the Committee the establishment of the office of Prosecutor-General, who could concentrate on the supervision and development of the operations of the public prosecutors, would contribute to a clearer legal situation.

52. The Committee aims at the creation of a completely independent public prosecution service. The Chancellor of Justice could then concentrate on the monitoring of the Council of State and the supervision of the legality of the official actions of the authorities and other public activities. Further, the Committee proposes that the public prosecution service be organized on two tiers: the Bureau of the Prosecutor-General would be hierarchically above the local prosecutors. The Bureau would have three or four regional offices. A new office, that of state prosecutor, would be established to supersede the current county prosecutors. They would be posted at the headquarters of the Bureau of the Prosecutor-General and of the regional offices. The state prosecutors would in the future be responsible for the criminal matters most significant to the interests of society.

B. Prisoner population and its development

53. The average prisoner population in Finland has during the past few years been some 3,500. A comparison of the daily averages from 1989 and 1994 shows that the number of prisoners serving sentences has remained constant, while that of remand prisoners has fallen from 350 to 259. The greatest change has occurred in the number of prisoners serving a conversion sentence. The daily average of such prisoners has increased from 98 to 221. The steepest rise in the numbers of fine defaulters occurred in 1991-1993; in 1993 the daily average hit a peak of 245. This increase reflects the economic recession in Finland.

C. Legislation on the enforcement of sentences

54. The amendments to the Act on the Enforcement of Sentences (AES) and the Remand Imprisonment Act entered into force on 1 May 1995. They are intended, inter alia, to improve the prevention of drug abuse in prisons and to increase the active participation of prisoners in prison programmes. The most important principles governing the treatment of prisoners have been moved to an Act from a hierarchically lower-level enactment. Also, the "normality principle" is now at the hierarchical level of an Act. Under this principle, the conditions within a prison must be organized to resemble as closely as possible those in the community at large. The enforcement of a sentence of imprisonment must be arranged so that the penalty comprises the deprivation of liberty only.

D. Confinement and appeal

55. A prisoner may be confined in the following situations:

(a) A prisoner may be kept in solitary confinement while a transgression is being investigated and a decision on disciplinary punishment expected (AES, chap. 2, sect. 10 (c)). A decision on solitary confinement is made by the warden or an official appointed by him. The maximum allowed time of solitary confinement is seven days;

(b) A prisoner may also be confined and kept separate from other prisoners when an Act specifically provides for a reason to do so (AES, chap. 3, sect. 9). Such reasons are a grave danger to the life or health of another, the prevention of a clear attempt at escape or jailbreak, the prevention of recurrent drug abuse or continued narcotics offence, as well as other conduct of the prisoner severely compromising the maintenance of order in the prison. A decision on confinement is made by the warden. The decision on confinement and the monitoring of the enforcement of the decision are to be carried out in cooperation with the prison doctor. Confinement must not be continued beyond the time necessary with regard to the purpose of the measure. The decision on confinement is to be reconsidered at one-month intervals. The prisoner has no appeal against the decisions referred to above. Instead, he has an unrestricted right to complain about it to an authority supervising the operations of the prisons. According to section 72 of the Prison Administration Decree the prisoner must be heard before the decision is made;

(c) A prisoner may be subjected to disciplinary punishment for a transgression. Such punishments are warning, suspension or restriction of rights, solitary confinement and not counting the time spent in solitary confinement or a part thereof towards service of sentence (AES, chap. 2, sect. 10). According to section 73 of the Prison Administration Decree the prisoner may appeal to the Department of Prison Administration of the Ministry of Justice against a decision of the prison board on the loss of time served during a disciplinary punishment if this exceeds 10 days or, when added to previous similar sanctions from the same period of imprisonment, 30 days. The prisoner has no appeal against other decisions on disciplinary punishment.

56. The decision of the Ministry of Justice on a prisoner is not subject to appeal, unless there is a separate provision for the same.

E. Preventive detention

57. It is provided in section 1 of the Incarceration of Dangerous Recidivists Act that when a court sentences a person to imprisonment for a fixed period it may, upon the demand of the public prosecutor and if the prerequisites laid down in that provision are fulfilled, at the same time state that the person can be incarcerated in preventive detention. The person may appeal against the sentence and the statement on incarceration before a court of appeal and further if granted leave to do so, to the Supreme Court.

58. When the sentence has become final, the Prison Court decides whether the person is incarcerated. This decision is final and not subject to appeal. However, the Prison Court must review its decision if it is found that the decision on incarceration is based on erroneous premises or if new evidence indicates that there manifestly is no need of incarceration.

59. The Prison Court is a judicial organ whose members have the responsibility of judges. The President of the Republic appoints four members, two of whom must have judicial experience and one of whom must be a psychiatrist. In addition, there is one lay member. The Director-General of the Prison Administration Service is a member by virtue of his office. The Court is chaired by one of the lawyer members, who has generally been appointed from among the judges of the courts of appeal.

60. According to section 13 of the Preventive Detention Decree, a person who has been incarcerated is generally subject to the provisions on imprisoned persons in the legislation governing the enforcement of sentences. No separate institutions have been established for preventive detention, but the incarcerated persons have in practice been placed in normal prison facilities among other prisoners. Accordingly, incarceration in preventive detention does not imply separation from other prisoners or solitary confinement. When, in specific cases, an incarcerated person has been kept separate this has been due to his own conduct or for reasons of prison safety. The incarcerated person is in these cases subject to the same rules as all other prisoners. Since 1971, it has been necessary to place two incarcerated persons into solitary confinement for a longer period.

61. The main point of incarceration in preventive detention is that the person is not eligible for parole, as other prisoners are, but instead, as a precautionary measure, he has to serve his entire sentence in an institution.

62. Unless the incarcerated person is released on parole after he has served his entire sentence, the matter must, according to section 15, paragraph 1, of the Incarceration Act, be reviewed by the Prison Court at intervals of six months at most. The option to continue the incarceration of a person beyond his sentence has never been used since 1971, when the current system was introduced.

63. At the moment there are 13 persons who have been incarcerated in preventive detention.

64. On 3 March 1994 the Penal Code Reform Project proposed to the Ministry of Justice that the incarceration of dangerous recidivists into preventive detention be abolished (see para. 33 above).

F. Staff training

65. The fair treatment of prisoners and respect of their human rights are dealt with on a number of occasions during the basic and advanced training of prison personnel. In basic training the students get acquainted with the pertinent legislation as well as the most important international human rights conventions and other corresponding rules. The principles of prisoner treatment are also taught in basic training. Similar training courses are also arranged as supplementary training for staff already employed in the Prison Administration Service. For instance, human rights have been dealt with in the seminar "European Integration and Prison Administration", arranged in the autumn of 1994, and in the recurrent training course "Cultural Clash in Prisons". The problems encountered by foreign prisoners have also been studied during the latter course. Training has also been given in, for example, the prevention of suicides in prisons.

G. Other current reform projects

66. The right of a prisoner to appeal against important decisions pertaining to himself is currently being considered. On 23 November 1993 the Ministry of Justice appointed a working group to consider the right of a person sentenced to imprisonment or community service to appeal against a decision of an enforcement authority pertaining to him. The working group is to consider which decisions should be made subject to appeal and to make a proposal on the appeal procedure and the effect of appeal on the enforcement of the sentence. The deadline set for the working group was 31 March 1995; it has submitted its report on the realization of the proposed reform to the Ministry of Justice.

H. The police

1. General

67. The Government of Finland issued its final comments to the CPT report in February 1994. They present an account of the measures undertaken in Finland on the basis of the observations and recommendations of the Committee. The following sections on the police (8.2-8.10) are generally based on the pertinent observations in the report.

2. Torture or other mistreatment

68. All reports of alleged police brutality from 1991 and 1992 (85 and 92, respectively) have been considered by the public prosecutors. Of these, 39 in 1991 and 42 in 1992 resulted in a decision not to bring charges or to an acquittal in court. There are no separate statistics on the reports found to have been false or unfounded.

3. Remand prisoners in police stations

69. Remand prisoners are kept in police stations only exceptionally. This is, however, quite often necessary especially in the bigger cities. Some reasons for this are:

(a) It is easier to identify remand prisoners, as victims and witnesses can get to police stations more easily than to prisons;

(b) Repeated interrogations and the display of evidence to remand prisoners in prisons is more difficult;

(c) It is more difficult to keep suspects separated in a prison, which jeopardizes the success of the investigation;

(d) An attempt is made to protect remand prisoners from the revenge of other prisoners; in such cases the remand prisoners are often kept in police stations at their own request;

(e) There is more room for flexibility in meetings with relatives and others than there is in county prisons.

70. The Finnish police do not usually pressure a remand prisoner in any way in order to obtain information or a confession. The transfer of a remand prisoner from police premises to a prison is not used as a means of pressure, but a decision on transfer is made when there no longer is a reason, referred to above, to keep the remand prisoner in the station. The transfer decision is made by the competent police officer.

71. When the Ministry of Justice approves the keeping of remand prisoners in given police premises, special attention is paid to the protection of the basic rights of the prisoner during the remand imprisonment. It is not possible to provide all remand prisoners kept in such premises, or even in county prisons, with rational full-time activity outside their cells. It has also been difficult to arrange for outdoor activity for arrested persons.

72. In the spring of 1994 the Ministry of Justice and the Ministry of the Interior held consultations on the development of the remand imprisonment system so that the observations and recommendations of the CPT were taken into account. Another goal has been to create a comprehensive monitoring system which allows for more accuracy when the Ministry of Justice monitors the times of remand imprisonment in police premises. It is intended that this development work should continue.

73. Nevertheless, it is not anticipated that the current practice of keeping remand prisoners in police premises can be totally abolished, as Finland has relatively few county prisons, as prison architecture does not allow for this and as there is a risk of tampering with evidence, especially in cases where there are large numbers of suspects. Also, it has not been deemed feasible, for reasons of efficiency, to move police prisons to the control of the Prison Administration Service.

4. Treatment of persons deprived of their liberty in police stations

74. In late 1993 the highest police command started an experiment on providing mattresses to the customers of detoxification centres. The Töölö detox centre in Helsinki was used as the test facility, once a suitable - for hygiene and for safety - model and material for the mattress had been selected. The experiment was carried out by means of forms to be filled in; opinions on the mattresses were asked from police officers, medical personnel, cleaning staff as well as every customer of the detox centre.

75. For the most part, the experiment yielded positive results. A need for the improvement of the surface material of the mattresses was, however, discovered. When this need has been addressed, the police precincts will be advised to provide mattresses to the customers of their detoxification facilities, within the limits of the resources allocated for this purpose.

76. The practical procedures adopted in the Töölö detox centre have been changed, pursuant to a written directive of the director of the centre, so that the inmate density of the cells is getting lower.

5. Legal safeguards preventing mistreatment of persons in police custody

77. It is the opinion of the Ministry for the Interior that, during a preliminary investigation the decision to delay notification of the relatives of an arrested person for special reasons should primarily be made by the official in charge of the investigation, who has detailed knowledge of the case at hand. The secondary option is that the decision on a delay of notification is made by another senior police official.

6. Right of counsel

78. According to section 12 of the Remand Imprisonment Act (1974/615) a person who has been detained or arrested has the right to converse in private with his attorney, unless there is a justified reason to believe that this right will be abused. The intention is that if the suspicion of abuse precludes an unattended visit, the person who has been detained or arrested could be provided with an opportunity to select an attorney from among the members of the Finnish Bar Association and converse with him in private.

7. Medical check-ups of persons deprived of their liberty

79. An arrested person has in practice quite a flexible choice of doctor who is to examine him, at his own expense, if he is not content with the services of the Finnish public medical care system, which is widely considered to be of a high standard and which is available to the arrested person free of charge.

80. For reasons of safety - of the doctor, of the arrested person and of police personnel - there is generally a police officer present during medical check-ups. Usually only the police officer concerned has knowledge of the possibly violent nature of the subject, his criminal background or, for example, his possible motivation to attempt escape or take hostages. The legal protection of the police officer charged with the guarding of the

subject may also be involved. If it is known that the subject is not violent or he is not expected to escape, there will not be a police officer present during a medical check-up, unless the doctor specifically asks for it.

81. The situation in Finland with regard to HIV and AIDS is relatively good. There are currently quite few - some 550 - patients, but the problem has none the less been taken into account. In principle, every arrested person is treated in a manner minimizing the danger of infection. If the subject is known to have AIDS, his cell door will be marked. This procedure is considered not to compromise the rights of the AIDS patient, as he is not visible to third parties and as the personnel must have knowledge of the situation, not least for reasons of occupational safety. Also the medical personnel have deemed the practice justifiable.

8. Informing arrested persons of their rights

82. The arrest form used by the police has been redesigned so that the arrested person confirms by his signature that he has been informed of his rights. The new form does not enumerate every individual right notified to the subject; it merely has a box which is checked after the information has been given. In addition, a poster on the rights of arrested persons is made available to the subject. The language used when arrested persons are informed of their rights is such that the subjects understand it reasonably well. The police make use of the services of an interpreter, where necessary.

83. The English translation of the poster on the rights of arrested persons, to be posted on the premises where the subjects are kept, is annexed to this report. Apart from English, it has been translated into Swedish, Russian, Estonian, German, French, Italian and Spanish.

9. Police interrogations

84. Detailed provisions on the correct interrogation procedures were formerly issued in the Police Gazette issued by the Ministry of the Interior, but due to their importance they have now been incorporated in the Preliminary Investigations Act, the Preliminary Investigations Decree and the Coercive Measures Act.

85. When the cadets of the police academies are trained in interrogation procedures they are given written instructions, which can later be used as a manual in practical police work. According to the Preliminary Investigations Act (1987/449) the police, before an interrogation, must notify the subject of his status in the preliminary investigation and of his rights and duties. It is for this reason that the "Pin" form, which can be given to the subject, has been added to the form array that the police use in preliminary investigations (see annex).

86. The subject of an interrogation has a legal right to have a reliable and impartial witness attend the interrogation. If the subject does not invoke this right, the established practice is to have a police officer witness the interrogation. This is the practice also in those situations where waiting for the arrival of the witness invited by the subject would delay the investigation and endanger its completion.

87. It is possible to record the interrogations carried out in preliminary investigations. This is, however, only rarely done. The recording of routine interrogations has not become a practice. It is primarily the interrogator who decides whether the interrogation is recorded or not.

88. As regards offences governed by the Penal Code, the number of interrogations carried out elsewhere than in police stations is negligible in proportion to the total number of interrogations, but they are none the less of great importance. The police also try to minimize any inconvenience caused, for example, by interrogations. Accordingly, if it would inconvenience the subject to arrive at a police station for an interrogation, it may be carried out, where discreetly possible, in the workplace of the subject, a hospital, an institution, a prison, a work colony, the home of the subject or another suitable place.

89. A language barrier may also hinder an interrogation if the subject uses the other official language of Finland and the interrogator does not know it. This may compromise the legal protection of the subject.

10. Investigation of alleged police criminality

90. Since the working group which was appointed to study the establishment of an independent commission to investigate offences allegedly committed by the police submitted its report, the establishment of such a commission has been under consideration; the underlying idea is to maintain the trust of the citizens in the police. The report outlines a number of different models ensuring maximum impartiality in the preliminary investigations. The mandate of the working group did not cover only police brutality but also other offences committed by police officers in the line of duty. The report was submitted to the Ministry of the Interior in 1990.

91. The matter has since then been considered by a working group whose members are drawn from the Ministry of the Interior and from the Office of the Chancellor of Justice. The mandate of this body is to prepare, in the spring of 1995, a proposal for a new investigative commission; the commission would be directed by an impartial public prosecutor and investigate the most serious offences alleged to be committed by the police in the line of duty.

92. The legislation on public officials has been amended since 1990. The Public Officials Act currently in force (1994/750) contains provisions on disciplinary proceedings, the general duties of public officials, warnings, suspensions, the board supervising public officials and dismissal. According to section 93, paragraph 2, of the Constitution it is possible, as provided by an Act, to demand that an official be sentenced to a punishment and ordered to pay damages, or to report an offence so as to have charges brought against that official.

93. The Parliamentary Ombudsman monitors, inter alia, the legality of the official actions of the police. The Office of the Ombudsman has in its service staff who have training and experience in preliminary investigations. The Ombudsman can take matters up for an investigation not only on the basis of a complaint, but also on his own initiative; the investigation may be carried out without recourse to an earlier preliminary investigation carried out by the police.

I. Military law

94. The issues of the Convention against Torture have been carried forward also in the field of military law.

95. The provisions of military law in chapter 45 of the Penal Code (1983/321), the Military Discipline Act (1983/331; includes provisions on confinement, a penalty comprising the deprivation of liberty) and Decree (1983/969) as well as the legislation on courts martial conform with the Finnish legal system, which is conducive to preventing violations of the Convention against Torture. As regards the investigation of offences and the pertinent coercive measures, military matters are handled in accordance with the provisions of the civilian Acts on preliminary investigation and coercive measures, except for certain organizational differences.

96. In the interests of control of the rigid hierarchy that is both characteristic and necessary to military communities, chapter 45, section 13 contains a provision on the misuse of a superior position. The General Staff Headquarters reissued its standing orders on the application of this provision on 25 February 1993; the orders also cover the pertinent duties of information and control. The standing orders have been annexed to this report. Consequently, the requirements in articles 10 and 11 of the Convention have been fulfilled.

J. Non-military national service

97. Non-military national service is performed by doing work that is useful for the society. The service must, according to section 17 of the Non-Military National Service Act (1991/1723), be arranged so that the duties are not in contradiction with the convictions of the serviceman. Servicemen are monitored and disciplined by specifically appointed persons who are subject to public liability.

98. A serviceman must conscientiously perform the duties assigned to him and comply with the regulations governing the arrangement and performance of non-military national service. A serviceman who violates or neglects his duty may be disciplined by warning, extra working time (at most four hours per day for five days) or loss of per diems for at most 30 days. The regular working time is 40 hours per week.

99. According to section 29 of the Non-Military National Service Decree (1991/1725) the workplace of the serviceman must take the necessary measures to scrutinize any violations of duty. An investigation must be started after that, unless the matter is so insignificant that it can be ignored or addressed by an oral reprimand. The investigation covers the compilation of information necessary for the resolution of the matter, concerning the infraction, the guilt of the serviceman under suspicion and the other relevant circumstances. If the serviceman is to be heard, minutes must be kept in the investigation. Prior to the hearing the serviceman must be notified of the matter being investigated and of his status in it. The minutes must be given to him to be read and approved; any comments he may have must be added to the minutes.

100. Prior to the resolution of a disciplinary matter the serviceman must have an opportunity to inspect the minutes and the other information compiled in the investigation and to submit a statement on them. The decision is to be in writing; it must indicate the time when it was notified to the serviceman and contain the necessary appeal instructions. The decision is subject to appeal before the county court in whose jurisdiction the workplace is located. Only a few appeals have come to the knowledge of the Ministry of Labour.

101. The instructions and the training provided to the workplaces used in non-military national service emphasize the correct disciplinary procedures.

K. Medical care

1. Act on Patient Rights

102. The Act on Patient Rights (1992/785) entered into force on 1 March 1993. It contains the basic legal principles relating to the care and treatment of patients. The Act also clarifies and reinforces the legal protection of patients and promotes the creation of trusting doctor-patient relationships in the increasingly complex and technical system of modern medical care. The Act applies to both public and private medical care.

103. According to the Act a patient has the right to high-quality medical care. The treatment and the care of the patient must be arranged so that his dignity is not violated and his convictions and privacy are respected. The provider of medical care is liable for any malpractice.

104. The native tongue of the patient, his individual needs and culture must be taken into account, in so far as possible, in the treatment and care given to him. The Act also contains provisions on the patient's access to treatment, his right to information, the right of self-determination and the status of under-age patients. A patient who is not content with the treatment and care he is given may object to the director responsible for medical care in the institution in question. The patient may use also the legal remedies that have earlier been available to him. All municipal health centres, hospitals and other institutions providing medical care must have an appointed patient adviser who, inter alia, advises and assists the patients, provides information and promotes the rights of the patients.

2. Mental Health Act

105. The Mental Health Act (1990/1116) entered into force in the beginning of 1991. According to the Act a person can be subjected to involuntary psychiatric treatment in a hospital only if (a) he is diagnosed as mentally ill; (b) due to the mental illness he is in need of treatment so that no treatment would lead to a substantial deterioration in his condition or endanger his health or safety or the health or safety of others; and (c) no other available form of mental care is suitable or adequate.

106. Due to considerations of the legal protection of mental patients the Act was amended, effective from 1 January 1995. Now the continuation of the treatment of a person who has been charged with an offence but whose sentencing has been waived, and whom the National Board of Medicolegal

Affairs has subjected to involuntary treatment, is no longer submitted for confirmation to the Board, but instead to a county court. In the trial before the county court the patient has the right to representation, cost-free proceedings and an oral hearing.

107. An under-age person may also be subjected to involuntary psychiatric treatment if, due to a severe mental disorder, he is in need of treatment so that no treatment would lead to a substantial deterioration in his condition or endanger his health or safety or the health or safety of others and if no other available form of mental care is suitable. Since the beginning of 1993, the involuntary treatment of an under-age person has had to be arranged in an institution that has both the resources and the capability necessary for the task. An under-age person must be treated separately from adults, unless it is deemed in the best interests of the under-age person not to do so.

3. Rehabilitation of torture victims

108. Upon the initiative of the Ministry of Social Affairs and Health, the Rehabilitation Centre for Torture Victims started operations under the aegis of the Helsinki Deaconesses' Institute on 1 September 1993. The Centre is a specialized medical institution which concentrates on the mental and physical rehabilitation of the torture victims who have come to Finland, estimates the need for rehabilitation resources and prepares plans for rehabilitation. It also provides training, consulting and advisory services to social and medical workers and conducts studies. The brochure published by the Helsinki Deaconesses' Institute on the operations of the Rehabilitation Centre for Torture Victims has been annexed to this report, in English and in French.

L. Social work

1. Child welfare

109. According to the amendments (1990/139) to the Child Welfare Act (1983/683) the wishes and opinion of the child must be taken into account when determining what is in the best interests of the child. In addition to the custodian, a child of 15 or over has the right to speak for himself in a child welfare case concerning himself, and a child of 12 or over must have an opportunity to be heard.

110. A child of 12 or over also has the right to request certain child welfare services. Before a decision is made on the taking of a child into social care, on fostering and on the return of the child from social care, the municipal social affairs board must always inquire for the wishes and opinion of the child, if this is possible with regard to his age and maturity, and to ensure that a child of 12 or over has an opportunity to be heard. Where necessary, the board must also hear experts in child development.

111. According to the amendments to the Child Welfare Decree the care and custody of a child must be arranged and the child must be treated with respect for his privacy. Further, the care and custody must be arranged so that the distance from the place where he lives does not prevent contact with persons who are important to the child. Treatment for a severe mental disorder must

be given in surroundings intended for children or families that are as familiar as possible to the child, in a surrogate family, family home or institution.

112. The question has been raised in certain recent trials of who should be representing the child when there is suspicion or knowledge that he has been abused at home. For instance, a court of appeal has ruled that the municipal social affairs board did not have the right to speak for the child before the court, even though the child had been taken into social care. In matters relating to property, a trustee is appointed for the child when there is a risk of a conflict of interest between the child and a parent. In contrast, in matters relating to the person of the child the legislation does not allow for this option.

113. In 1992 and 1993 the Parliamentary Ombudsman made a number of inspection visits to State reformatories. During the visits he paid special attention to the human rights and legal protection of the children placed in the reformatories.

114. The Child Welfare Act and Decree contain detailed provisions on the time limits and procedures that apply if the basic rights and fundamental freedoms of children need to be restricted owing to reasons of treatment. Coercive measures and restrictions may only be used on the basis of treatment or upbringing and not as punishment. Some procedural failures were noted in the inspections; the reformatories in question were admonished for them. The Ombudsman has also heard complaints, filed by children, of the practices relating to the restriction of their basic rights in surrogate homes.

2. Development of the social and medical services

115. The aim of the social and medical services is to move away from institution service and towards outpatient service. The development of service is intended to improve the humaneness of treatment and care as well as the chances of the patient to have a voice in matters concerning himself. The main principles of the development are laid down in the national social and medical care programme, which the Council of State adopts annually, in connection with the draft budget. The programme is distributed to the county governments, central hospitals and municipal health centres to be used as a guideline.

116. The Ministry of Social Affairs and Health is in the process of reforming the legislation relating to social and medical care; the first phase of the reform involves the provisions relating to the status and legal protection of the customers.

3. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

117. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment entered into force in Finland in April 1991. In the report of the CPT none of the recommendations involved the social and medical services directly. However, certain recommendations pertained to the welfare of the customers of the social and medical services. For instance,

the Committee expressed its concern of the fact that the Töölö detox centre did not have a medic on duty on a full-time basis. It was also recommended that all new prisoners be given a medical check-up as soon as possible after their admission into prison. The Prison Administration was also exhorted to prepare instructions for the prevention of prisoner suicides. Finland has declared that prison personnel is trained in the prevention of suicides. The launching of a dedicated programme for the prevention of suicides will be subject to a separate decision.

M. Ethnic minorities and foreigners in Finland

1. General

118. Since Finland submitted its first report, legislative adjustments have been carried out on the basis of the comments made by the Committee against Torture.

119. The human rights group of Parliament has heard citizens' organizations on, inter alia, ethnic issues and the status of foreigners. There has been some debate on the reinforcing of the offices of the Parliamentary Ombudsman and/or the Immigration Ombudsman. The establishment of an office of a special human rights ombudsman has also been under consideration. This office would be set up along the lines of the corresponding Swedish office.

120. According to the Advisory Board for Romany Affairs a disproportionate number of prisoners belongs to the Finnish Romany minority. The police maintain a special computerized register of the Romany population. There have also been complaints of discrimination against them in prisons. Especially in 1993 and 1994, the criminal workers of the Church, among others received a number of complaints of ethnic discrimination.

121. The lack of a common language and cultural differences are problems specific to Finland with regard to foreign prisoners. Half of the some 60 foreign prisoners in Finland have been placed in prisons in Helsinki and the rest have been spread over various other institutions. It is evident that a lone foreigner who does not understand Finnish and cannot make himself understood runs the risk of abuse from the other prisoners.

2. Human rights instruction

122. Since 1990, human rights instruction has been given an increased role in the training of prison personnel.

123. The Finnish prison chaplains participated in the 1992 human rights seminar of the Council of Europe in Strasbourg, France.

3. Asylum

124. The new Immigration Act (1991/378) was issued on 22 February 1991. It entered into force on 1 March 1991. The Act was amended by the Act of 28 June 1993 (1993/639), which entered into force on 15 July 1993. The purpose of the new Immigration Act is to improve the legal protection of foreigners. The authorities retain, nevertheless, the necessary powers to

prevent international terrorism and the expansion of crime. It intended to continue to improve the protection of, in particular, those foreigners who are in need of asylum.

125. Chapter 5 of the Immigration Act, which deals with asylum, is entitled "Shelter from persecution". The provision on asylum in the Act (sect. 30) is based on the 1951 Geneva Convention relating to the Status of Refugees and the 1967 Protocol.

126. According to section 31 of the Act an asylum-seeker who is denied asylum may be granted a permit to remain owing to his need of shelter, if it is considered that he cannot safely return to his country of origin or habitual residence. According to section 20 a foreigner may also be granted a permit to remain for an important humanitarian reason.

127. There is provision of the expedited consideration of clearly ill-founded (sect. 32, para. 2) and manifestly ill-founded (sect. 34) applications in order to ensure that the applications of people who are in genuine need of asylum or shelter can be considered in a reasonable time.

128. The Ministry of the Interior's decision on asylum is subject to appeal before an independent judicial organ, the Asylum Board (sect. 57). The members of the Board have the responsibility of a judge. The right of appeal has been extended to cover the Ministry of the Interior's decision finding that the asylum-seeker is not in need of shelter (sect. 57).

129. In 1993 the Asylum Board ruled on 247 appeals against the Ministry's decisions on asylum and permits to remain. Six appeals were accepted by granting asylum (in one case asylum was granted to an entire family) and in 15 cases the foreigner was granted a permit to remain owing to his need of shelter. In 1994 the Board ruled on 242 appeals. Asylum was granted in 4 and a permit to remain in 54 cases.

130. With regard to the legal protection of the asylum-seeker, it should be noted that the asylum process is in Finland followed by another, separate process for the compulsory expulsion of the foreigner, either by turning him back from the border or deporting him. Further, an asylum-seeker whose application has been rejected has the right of appeal against a turn-back or deportation decision of the Ministry of the Interior before the Supreme Administrative Court (sect. 58).

131. Chapter 6 of the Immigration Act contains provisions on the exclusion and expulsion of foreigners. The grounds for turn-back (sect. 37) and deportation (sect. 40) are set out in detail. According to sections 38 and 41 of the Immigration Act the authority considering turn-back or deportation must pay special attention to the fact that no one is to be sent to a place where he runs the risk of abuse or persecution, as referred to in the asylum provision (sect. 30) of the Act, nor to a place from where he could be sent to such a place. Thus, the Act contains an express return ban, which is provided for, inter alia, in article 3 of the Convention against Torture.

132. According to section 58 of the Immigration Act a turn-back or deportation decision of the Ministry of the Interior is subject to appeal before the Supreme Administrative Court. All the same, a turn-back decision may under section 62 be enforced regardless of appeal, unless the Supreme Administrative Court grants a stay of enforcement. A deportation decision may be enforced before it becomes final only if the foreigner consents to the enforcement in the presence of two impartial witnesses. A total of 476 foreigners, most of them asylum-seekers, were deported in 1993. There were fewer deportations (163) in 1994.

133. In 1993 the Immigration Centre of the Ministry of the Interior and the passport control officials turned back 1,165 and 1,409 foreigners, respectively, 189 appeals were lodged against turn-back decisions before the Supreme Administrative Court. In 1994 the Immigration Centre made 432 turn-back decisions and the passport control officials 2,184.

134. Last year the Supreme Administrative Court reversed quite a few turn-back and deportation decisions. Reference was made in the grounds for the judgements inter alia, to article 7 of the International Covenant on Civil and Political Rights and to articles 3 and 8 of the European Convention on Human Rights. In 1993 the Court received 441 appeals relating to foreigners (mostly against turn-back and deportation decisions) and in 1994 somewhat fewer, i.e. 282 appeals. In 1993 58 appeals were accepted outright and 29 were returned for a new consideration; in 1994 the corresponding numbers were 39 and 48.

135. The provisions on the administrative custody of foreigners in chapter 7 of the Immigration Act correspond to a great degree to those contained since 1990 in the previous Act.

136. According to section 48 of the Immigration Act the police officer deciding on administrative custody must, without delay and at the latest on the following day, notify the administrative custody to the lower court in whose jurisdiction the foreigner is being kept in custody. The court must consider the case without delay and at the latest on the fourth day after the foreigner was taken into custody. According to section 49 of the Immigration Act the court must immediately release the foreigner if there is no sufficient cause for administrative custody. According to section 50 the police officer who decided on administrative custody must order the immediate release of the foreigner when there is no longer sufficient cause for administrative custody.

137. If a foreigner held in detention has not been ordered released, the lower court for the district where the detainee is held must, under section 51, on its own initiative reconsider the matter no later than two weeks after the date on which the court ordered that the detainee continue to be held in custody. According to section 47 the foreigner must be kept in administrative custody in a place that is suitable for the purpose. The provisions on the treatment of remand prisoners apply, where appropriate, to the treatment of a person in administrative custody.

138. Section 1 of the Immigration Act contains a provision under which the rights of foreigners cannot be restricted more than what is necessary.

N. Complaints to the Parliamentary Ombudsman

139. According to the instructions of the Committee against Torture, the reports and supplementary reports to the Committee must include, inter alia, information on any complaints of torture or other cruel, inhuman or degrading treatment or punishment. During the period covered by this supplementary report no references have been made to the Convention against Torture in the complaints addressed to the Parliamentary Ombudsman, neither do the Ombudsman's decisions contain any such references.

140. Article 3 of the European Convention on Human Rights and article 7 of the International Covenant on Civil and Political Rights have been referred to in a number of individual complaints. The pertinent decisions have evaluated the actions of the authorities, but no violations of the provisions have been discovered. However, during the period covered by this supplementary report the Parliamentary Ombudsman and the Assistant Ombudsman have in several cases criticized official actions for having degrading or demeaning aspects; these actions can perhaps in this context be considered cases referred to in the instructions of the Committee.

141. The following is a list of decisions relating to the treatment of prisoners. They have been published in the annual report (Rep.) of the Ombudsman and in the English summary (Summ.) to the same:

(a)	Right of prisoner to mental treatment:	No. 756/4/89, 1991, Rep. p. 30, Summ. p. 27;
(b)	Bodily search in prison:	No. 141/4/89, 1991, Rep. p. 44, Summ. p. 41;
(c)	Medical surveillance of a prisoner:	No. 1279/4/91, 1314/4/91 and 1252/2/92, 1992, Rep. p. 69, Summ. p. 70;
(d)	Keeping remand prisoners in police premises:	No. 1340/4/91, 1993, Rep. p.72;
(e)	Right of remand prisoner to meet close relatives:	No. 442/4/93, 1993, Rep. p.150.

142. The following decisions relate to the treatment of conscripts:

(a)	Improper treatment of conscripts:	No. 1702/2/90, 1991, Rep. p. 35, Summ. p. 34;
(b)	Misuse of superior position:	No. 468/4/91, 1991, Rep. p. 37, Summ. p. 35;
(c)	Kicking conscripts:	No. 963/2/93, 1993, Rep. p. 39, Summ. p. 34;
(d)	Treatment of conscripts in military hospital:	No. 523/4/92, 1993, Rep. p. 111.

143. The following decisions relate to foreigners and especially asylum-seekers:

(a)	Administrative custody of foreigners (in this case the Ombudsman made a proposal to the Council of State, because he considered the practice of keeping foreigners in administrative custody in police premises or county prisons to be contrary to the legislation in force):	No. 1705/4/91, 1992, Rep. p. 31, Summ. p. 23;
(b)	Right of asylum-seeker to counsel:	No. 1478/4/89, 1991, Rep. p. 61, Summ. p. 49;
(c)	Treatment of asylum-seekers:	No. 111/4/91, 1991, Rep. p. 79, Summ. p. 53.

144. Other pertinent decisions involve:

(a)	Confinement in children's psychiatric ward:	No. 955/4/90, 1991, Rep. p. 86, Summ. p. 57;
(b)	Shackling of the accused in court:	No. 717/4/90, 1992, Rep. p. 70, Summ. p. 73;
(c)	Keeping the accused standing in court:	No. 1080/2/92, 1993, Rep. p. 57, Summ. p. 45;
(d)	Restriction of children's right of self-determination in reformatory:	No. 971/4/91 and 1986/2/93, 1992, Rep. p. 87, Summ. p. 92 and 1993 Rep. p. 107, Summ. p. 69.

145. The annual reports of the Parliamentary Ombudsman from 1991-1993 and their English summaries are annexed to this report.

O. Decisions of the European Commission of Human Rights of the Council of Europe

146. In the case *T.V. v. Finland* (No. 21780/93) the Commission handed down a decision on 2 March 1994, dismissing the complaint and stating as its overall view that the treatment of the complainant in a penitentiary had not been in breach of articles 3 and 8 of the Convention on Human Rights. In the case *Jarmo Koskinen v. Finland* (No. 20560/92) the Commission reached the same conclusion in a complaint of a breach of article 3.

List of annexes*

1. Report to the Finnish Government on the visit to Finland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT(92)50).

2. Follow-up report of the Government of Finland to the Interim Report in response to the report prepared by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, following its visit to Finland in May 1992.

3. Reply of the Government of Finland to the recommendations, comments and requests for further information contained in the report on the visit to Finland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in May 1992.

4. List of rights of persons in police custody.

5. Brochure on the Centre for Torture Survivors in Finland.

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* Available for consultation in the files of the Centre for Human Rights.